

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. CHIEF JUSTICE MARSHALL

V

1451 Kelley 9
Clerk
R
Young

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

APRIL TERM, 1929

No. 5031

733

NATIONAL METROPOLITAN BANK, A
CORPORATION, PLAINTIFF IN ERROR,

vs.

REALTY APPRAISAL AND TITLE COMPANY,
A CORPORATON.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 19, 1929.

PRINTED OCTOBER 11, 1929.



Court of Appeals of the District of Columbia

APRIL TERM, 1929

No. 5031

NATIONAL METROPOLITAN BANK, A
CORPORATION, PLAINTIFF IN ERROR,

vs.

REALTY APPRAISAL AND TITLE COMPANY,
A CORPORATION, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	1	1
Declaration	2	1
Demand for a jury trial.....	3	3
Pleas	3	3
Joinder of issue.....	5	5
Verdict	6	5
Motion for new trial.....	6	5
New trial overruled and judgment.....	6	6
Order fixing amount of supersedeas bond.....	7	6
Assignments of error.....	7	7
Bill of exceptions.....	8	7
Writ of error.....	22	20
Designation of record.....	23	21
Clerk's certificate.....	24	22

Court of Appeals of the District of Columbia

No. 5031.

NATIONAL METROPOLITAN BANK, a Corporation, Plaintiff in
Error,

vs.

REALTY APPRAISAL AND TITLE COMPANY, a Corporation.

1 Municipal Court of the District of Columbia.

No. A-5395.

REALTY APPRAISAL AND TITLE COMPANY, a Corporation,
Plaintiff,

vs.

NATIONAL METROPOLITAN BANK, a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 *Declaration.*

(Filed July 3, 1929.)

First Court.

The plaintiff, Realty Appraisal and Title Company, a corporation, duly organized and existing under and by virtue of laws of the State of Delaware, sues the defendant, National Metropolitan Bank, a corporation duly organized

and existing under and by virtue of the National Banking Act of the United States, for that on, to wit, the 16th day of December, 1926, and since said time continuously, the defendant has been a National Bank doing a banking business in the District of Columbia, and the plaintiff herein has been a depositor with the defendant, having on deposit on the 16th day of December, A. D., 1926, and continuously since said time a sum in excess of, to wit, \$1,000.00; that on, to wit, the 16th day of December, 1926, the plaintiff by its check of said date, ordered the defendant to pay to the order of one Emelia Murray the sum of \$728.13; that the said defendant did not pay the said sum to the order of the said Emelia Murray, but paid the same to persons unknown to your plaintiff and yet nevertheless charged the same to the account of the plaintiff herein; that the plaintiff has made frequent demands for the payment of the said sum paid as aforesaid to person or persons other than the order of the said Emelia Murray, but the defendant has wholly refused to pay the same or credit the account of the plaintiff with the sum of money wrongfully paid as aforesaid.

And the plaintiff claims the sum of \$728.13, with interest therein from the 16th day of December, 1926, at 6% per annum, besides costs of this suit.

Second Count.

The plaintiff, Realty Appraisal and Title Company, a corporation, duly organized and existing under and by virtue of laws of the State of Delaware, sues the defendant, National Metropolitan Bank, a corporation duly organized and existing under and by virtue of the National
3 Banking Act of the United States, for that on, to wit, the 16th day of December, 1926, and since said time continuously, the defendant has been a National Bank doing a banking business in the District of Columbia, and the plaintiff herein has been a depositor with the defendant, having on deposit on the 16th day of December, A. D. 1926, and continuously since said time a sum in excess of, to wit, \$1,000.00; that on, to wit, the 5th day of January, A. D. 1927, the plaintiff by its check of said date, ordered the defendant to pay to the order of one Emelia Murray the sum

of \$192.47; that the said defendant did not pay the said sum to the order of the said Emelia Murray, but paid the same to persons unknown to your plaintiff and yet nevertheless charged the same to the account of the plaintiff herein; that the plaintiff has made frequent demands for the payment of the said sum paid as aforesaid to person or persons other than the order of the said Emelia Murray, but the defendant has wholly refused to pay the same or credit the account of the plaintiff with the sum of money wrongfully paid as aforesaid.

And the plaintiff claims the sum of \$192.47, with interest thereon from the 5th day of January, 1927, at 6% per annum, besides the costs of this suit.

(Sgd.)

GEORGE W. OFFUTT,

Attorney for Plaintiff.

Demand for Jury Trial.

(Filed July 31, 1928.)

Now comes the defendant, National Metropolitan Bank, a corporation, and demands a jury trial in the above entitled case.

(Sgd.)

DONALDSON & JOHNSON,

(Sgd.)

VERNON E. WEST,

Attorneys for Defendant.

Pleas:

(Filed July 31, 1928.)

4

Plea to First Count.

The defendant, National Metropolitan Bank, a corporation, for plea to the first count of the declaration filed herein by the plaintiff, Realty Appraisal and Title Company, a corporation, says that it admits that it is a corporation duly organized and existing under and by virtue of the National Banking Act of the United States and that on, to wit, the 16th day of December, 1926 and since said time, continuously, has been a National Bank doing banking business in the District of Columbia and the plaintiff herein has been a depositor with the defendant since prior to the

16th day of December, 1926 and had on deposit on said date and has had continuously thereafter on deposit a sum in excess of \$1,000; defendant denies that on the 16th day of December, 1926 or on any other day the plaintiff, by its check, ordered the defendant to pay to the order of one Emelia Murray the sum of \$728.13 or any other sum, and on the contrary avers the true fact to be, that on, to-wit, the 16th day of December, 1926, the plaintiff, by its check, ordered the defendant to pay to the order of one Theodosia Stevenson under the name of Emelia Murray, the sum of \$728.13 and that the said defendant did pay the said sum to the order of said Theodosia Stevenson under the name of Emelia Murray and charged the same to the account of the plaintiff herein; and the defendant admits that it has wholly refused to pay the said sum to the plaintiff or credit the same to the account of the plaintiff.

Plea to Second Count.

The defendant, National Metropolitan Bank, a corporation, for plea to the second count of the declaration filed herein by the plaintiff, Realty Appraisal and Title Company, a corporation, says that it admits that it is a corporation duly organized and existing under and by virtue of the National Banking Act of the United States and that on, to-wit, the 16th day of December, 1926, and since said time, continuously, has been a National Bank doing banking business in the District of Columbia and the plaintiff herein has been a depositor with the defendant since prior to the 16th day of December, 1926 and had on deposit on said date and has had continuously thereafter on deposit a sum in excess of \$1,000; defendant denies that on the 5th day of January, 1927 or on any other day the plaintiff, by its check, ordered the defendant to pay to the order of one Emelia Murray the sum of \$192.47 or any other sum, and on the contrary avers the true fact to be, that on, to-wit, the 5th day of January, 1927, the plaintiff, by its check, ordered the defendant to pay to the order of one Theodosia Stevenson under the name of Emelia Murray, the sum of \$192.47 and that the said defendant did pay the said sum to the order of said Theodosia Stevenson under the name of Emelia Murray and charged the same to

the account of the plaintiff herein; and the defendant admits that it has wholly refused to pay the said sum to the plaintiff or credit the same to the account of the plaintiff.

(Sgd.) DONALDSON & JOHNSON,
(Sgd.) VERNON E. WEST,
Attorneys for Defendant.

Joinder of Issue.

(Filed August 14, 1928.)

Comes now the plaintiff by its attorneys and joins issue on each and every plea filed by the defendant in the above-entitled cause.

(Sgd.) GEORGE W. OFFUTT,
(Sgd.) ROSS H. SNYDER,
Attorneys for Plaintiff.

6

Verdict.

(March 20, 1929. Min. 39, Page 207.)

Come again the parties aforesaid and the same jury res-pited yesterday, and after this cause is given to the jury in charge, they upon their oath say they find in favor of the plaintiff for the sum of Nine Hundred and Twenty and 60/100 Dollars (\$920.60).

Motion for New Trial.

(Filed March 25, 1929.)

Now comes the defendant National Metropolitan Bank, a corporation, and moves the court for a new trial in the above entitled cause and for reasons therefor shows to this court:

1. That the court erred in granting plaintiff's prayer for an instructed verdict in its behalf.
2. That the court erred in not instructing the jury as requested by the defendant.

(Sgd.) DONALDSON & JOHNSON,
(Sgd.) VERNON E. WEST,
Attorneys for Defendant.

Notice.

To Messrs. George W. Offutt and Ross N. Snyder,
Attorneys for Plaintiff:

Please take notice that the foregoing motion will be called to the attention of the court on Thursday, March 28, 1929, at 10 o'clock A. M., or as soon thereafter as counsel may be heard.

(Sgd.) DONALDSON & JOHNSON,
(Sgd.) VERNON E. WEST,
Attorneys for Defendant.

New Trial Overruled and Judgment.

(June 15, 1929. Min. 39, Page 355.)

Come now the parties hereto, by their respective attorneys of record, and the motion for a new trial filed
7 herein being considered, it is ordered that said motion be, and the same is hereby overruled. Wherefore, it is considered that the plaintiff recover of defendant herein, the sum of Nine Hundred Twenty and 60/100 Dollars (\$920.60) with interest on Seven Hundred Twenty eight and 13 100 Dollars (\$728.13) from December 16, 1926, and on One Hundred Ninety Two and 47/100 Dollars (\$192.47) from January 5, 1927, and costs and have execution thereof.

Order Fixing Amount of Supersedeas Bond.

(July 3, 1929. Min. 39, Page 384.)

The defendant's counsel advises the Court that it may wish to apply for a writ of error, and moves the Court to fix the maximum amount of an undertaking to operate as a supersedeas, and the Court thereupon by the consent of the parties plaintiff and defendant and their respective attorneys of record fixes the same in the sum of One Thousand Dollars (\$1,000).

Undertaking on Appeal, with United States Fidelity and Guaranty Company as Surety, filed in this Court July 3, 1929.

Assignments of Error.

(Filed July 30, 1929.)

Now comes the defendant, National Metropolitan Bank, and assigns as reversible error the following:

1. The Court erred in granting plaintiff's prayer for an instructed verdict in its behalf.

2. The Court erred in not overruling plaintiff's prayer for an instructed verdict in its behalf.

3. The Court erred in directing the jury to return a verdict for plaintiff.

4. The Court erred in not submitting the case to the jury.

DONALDSON & JOHNSON,
VERNON E. WEST,
Attorneys for Defendant.

S In the Municipal Court of the District of
Columbia.

At Law.

No. A-5395.

REALTY APPRAISAL & TITLE COMPANY, a Corporation,
Plaintiff,

vs.

NATIONAL METROPOLITAN BANK, a Corporation, Defendant.

Bill of Exceptions.

Be it remembered that the above-entitled cause came on for trial on the 20th day of March, 1929, before Judge Ankam and a jury.

Thereupon, to maintain the issues on its part joined, plaintiff offered as a witness **Mrs. Annie W. Ball**, who testified that she was Secretary and Treasurer of the Plaintiff Corporation; that the plaintiff was a depositor in the Defendant Bank; that both witness and one A. L. Timberlake were authorized to sign checks on behalf of the plaintiff. Thereupon, witness identified her signature and the signature of A. L. Timberlake upon a certain check dated December 16, 1926 which said check was offered and received in evidence and marked "Plaintiff's Exhibit A." Said check is in words and figures as follows:

"PLAINTIFF'S EXHIBIT A."

Case —. Lot 16942. Square —.

Washington, D. C., December 16, 1926. No. 20871.

National Metropolitan Bank of Washington pay to the order of Emelia Murray \$728.13/100 Seven Hundred Twenty-Eight Dollars Thirteen Cents.

REALTY APPRAISAL AND
TITLE COMPANY,

Trustee.

A. W. BALL,

Secretary-Treasurer.

A. L. TIMBERLAKE,

Asst. Treas.

[On left margin:] Telephone: M 5376. Realty Appraisal and Title Company, 1416 F Street, Northwest.

9 Endorsed on back: Emelia Murray. Clinton T. Flanagan, Trustee. Pay to the order of any bank, banker, or trust Co. Prior endorsements guaranteed. Dec. 17, 1926. The Commercial National Bank of Washington, D. C.

Thereupon, the witness identified the signature of herself and the signature of A. L. Timberlake upon a certain check dated January 5, 1927, which said check was offered and received in evidence and marked "Plaintiff's Exhibit B." Said check is in words and figures as follows:

"PLAINTIFF'S EXHIBIT B."

Case 16942. Lot —. Square —.

Washington, D. C., Jan. 5, 1927. No. 20926.

National Metropolitan Bank of Washington pay to the order of Emelia Murray \$192.47/100 One Hundred Ninety-Two Dollars Forty-seven cents.

REALTY APPRAISAL AND
TITLE COMPANY,

Trustee.

A. W. BALL,

Secretary-Treasurer.

A. L. TIMBERLAKE,

Asst. Treas.

[On left margin:] Telephone: M 5376. Realty Appraisal and Title Company, 1416 F Street, Northwest.

Endorsed on back: Emelia Murray. Clinton T. Flanagan. Pay to the order of the Commercial National Bank, Washington, D. C. Prior endorsements guaranteed. Mount Vernon Savings Bank. Wm. R. Baum, Vice-President & Cashier. Jan. 6, 1927. Pay to the order of any bank or banker. Prior endorsements guaranteed. The Commercial National Bank, Washington, D. C. J. H. Baden, Vice-President & Cashier."

10 The witness further testified that both of these checks were delivered to one Clinton Flanagan and were returned to the plaintiff from the National Metropolitan Bank.

On cross-examination the witness testified that the plaintiff is a Title Company; that these checks were delivered in settlement of a loan made by one Mr. Hill upon the security of Lot 23 in Square 395 (1729 Ninth Street, Northwest) in the District of Columbia; that witness is a Notary Public and took the acknowledgment to a deed of trust given to secure the loan on the property above mentioned, said deed of trust bearing date the 14th day of December, 1926 and professing to be made by one Emelia Murray to William K. Hill and C. F. Waring. Trustees; that the signature "Annie W. Ball" as Notary Public to said acknowledgment is witness' signature; that the person who signed said deed of trust in the name of "Emelia Murray" was not Emelia Murray, but was one Theodosia Stevenson, but witness believed her to be Emelia Murray at the time she took the acknowledgment; that said checks, Plaintiff's Exhibits A and B, were delivered to someone authorized by Theodosia Stevenson; that witness did not deliver the checks to Flanagan herself, but handed them to the Settlement Clerk and he handed them to Flanagan who was Mrs. Emelia Murray's agent and to whom the checks were made as the owner of the property; that she intended the checks to be delivered to the party who acknowledged the deed, if she were Emelia Murray; that Theodosia Stevenson was the person who was introduced to her as Emelia Murray, and the witness intended the checks to be delivered to her, Theodosia Stevenson; that

Mr. M. J. Wright is the President and active head of the Plaintiff Company and witness acted under his instructions in the matter.

11 Further to maintain the issues on its part joined, the Plaintiff offered as a witness **Moses J. Wright**, who testified that he is a lawyer and President of the Plaintiff Company, and has been President of such Company for about nine years; that in the first part of the month of December, 1926, his Company was called upon to make examination of the title to Lot 23, Square 395, being known as premises 1729 Ninth Street, Northwest; that he does not recall who placed the order originally, but thinks it was Flanagan, but eventually, Mr. Charles F. Waring, who has adjoining offices, took up the matter and said he was going to make a loan on that property; that the title to the property was found in the name of Emelia Murray; that Mr. Waring drew up the papers and one of his clients, Mr. William K. Hill, sent in a check for plaintiff to disburse, with instructions as to how it should be disbursed; that he understood Flanagan was collecting rents from this property and was making repairs to the premises; that he ordered the check, Plaintiff's Exhibit "A," drawn payable to Emelia Murray and delivered to Flanagan; that he intended the record owner of Lot 23, Square 395 to receive the proceeds of that check and he knew that person was Emelia Murray. That both checks were delivered to Flanagan.

On cross-examination, the witness testified that he had known Flanagan since about October, 1926; that he had had one prior transaction with him that related to a piece of property in Square 150, which transaction was with one Mollie B. Hall; that prior to December 16, 1926, he had never met Emelia Murray to know her by name; that Theodosia Stevenson and not Emelia Murray executed a note for \$2,000 secured on lot 23 in Square 395 and the deed of trust securing the loan; that witness' Company, believing the deed of trust and the deed of trust note had been
12 executed by Emelia Murray herself, the owner of the property, authorized the giving of this check; that he did not authorize the giving of the check to one whom he believed to be Emelia Murray and the one who had executed the deed of trust and the deed of trust note; that had

he believed that the deed of trust note had not been executed by Emelia Murray, he would not have issued the check; that he issued the check under the belief that the one who executed the deed of trust was Emelia Murray; that he issued the check in the belief that it could not be collected by anybody except Emelia Murray; that witness is a member of the Bar of the District of Columbia and has been a member for about eight years; that he has been a member of the New York Bar for about twenty-four or twenty-five years; that he was a practicing lawyer in New York, but has not practiced in the District of Columbia, except in real estate and in occasional cases; that he read portions of the case of Central National Bank against the Metropolitan National Bank in 31 Appeals, within a week preceding the giving of his testimony.

On redirect examination witness testified that it is the custom of the Title Company to make checks payable to the owner of the property and deliver them to the Agent of the person or broker who places the order; that in this case the plaintiff followed its usual custom and there was nothing at the time to indicate that there was anything wrong.

Further to maintain the issues on its part joined, plaintiff offered as a witness **Charles V. Etzler**, who testified that he was employed as a Clerk in the Defendant Bank; that the checks, Plaintiff's Exhibits A and B, were paid by the defendant Bank and were charged to the account of the plaintiff and have never been re-credited.

13 Further to maintain the issues on its part joined, plaintiff offered as a witness **Emelia Murray**, who testified that she is the owner of premises 1729 Ninth Street, Northwest and knows of no other lady in the City of Washington by the name of Emelia Murray; that she did not sign the name "Emelia Murray" appearing on the back of the checks, Plaintiff's Exhibits A and B, nor did she authorize or instruct anyone to sign her name for her, nor did she consent to anyone signing her name; that she knows nothing about the endorsing of the two checks; that she got no money for them and got none of the proceeds of the two checks.

On cross-examination, the witness testified that neither on December 16, 1926 nor on January 5, 1927, did the plaintiff owe her any money; that plaintiff has never owed her any money at any time; that she has never had any business relations with plaintiff and plaintiff had never agreed to loan her any money.

Upon redirect examination witness testified that she knew Clinton T. Flanagan; that he had nothing to do with her property, did not collect any rent for her and did not make any repairs on her house; that she did give a contract and then got the contract handed back to her, that said contract was made with a Mr. Robertson or Robinson.

On recross-examination, witness testified that Flanagan was not her agent at all, that she just knew him from that contract with Mr. Robertson; that witness at that time also owned premises 2006 Seventeenth Street.

On redirect examination witness testified that Flanagan had about \$1,100 of her money to make repairs to premises No. 1729 Ninth Street.

On recross-examination witness testified that she had a first trust on premises 1729 Ninth Street of \$4,000 and that she neither gave, nor authorized anyone to give,
14 a second trust on that property in December, 1926.

Plaintiff, further to maintain the issues on its part joined, offered as a witness Theodosia Stevenson, who testified that in December, 1926, she did days' work for Flanagan, cleaning his office on Tuesdays and Thursdays of each week and also did his house cleaning. Plaintiff offered and the same was received in evidence, a promissory note professing to be signed by Emelia Murray in the sum of \$2,000 dated December 14, 1926, payable in monthly installments, to A. L. Timberlake, said note purporting to be secured by second deed of trust on Lot 23, Square 395 to William K. Hill and C. F. Waring, Trustees, said note being identified by Annie W. Ball as the note described in a deed of trust to the Trustees named on said note and as having been executed in her presence, which said note was marked Plaintiff's Exhibit C.

Plaintiff also offered, and the same was received in evidence, a deed of trust dated December 14, 1926, professing

to be made by Emelia Murray, conveying said lot 23 in Square 395, to William K. Hill and C. F. Waring, as Trustees, to secure the payment of said note, Plaintiff's Exhibit C, which said deed of trust was acknowledged before Annie W. Ball, Notary Public. Said acknowledgment reads as follows:

“DISTRICT OF COLUMBIA, *To wit:*

I, Annie W. Ball a Notary Public in and for the District of Columbia, do hereby certify that Emelia Murray, acting herein in relation to her sole and separate estate, party to a certain deed bearing date on the 14th day of December, 1926, and hereto annexed, personally appearing before me in said District, the said Emelia Murray being personally well known to me as the person who executed the said deed and acknowledged the same to be her act and deed.

“Given under my hand and seal this 14th day of December, 1926.

ANNIE W. BALL,
Notary Public.”

Said deed of trust was marked Plaintiff's Exhibit “D.”

15 Witness further testified that one morning she went to work for Flanagan and he took her in his car to an office and told her to go in the office and gave her a slip of paper and she went in and signed the papers, Plaintiff's Exhibits C and D; that she did not know what she was doing; that she asked Flanagan did he want her to do something that would put her in trouble and Flanagan told her it wasn't anything to put her in trouble; that she signed the name “Emelia Murray”; that she did not endorse the name “Emelia Murray” on checks. Plaintiff's Exhibits A and B, and never authorized anybody to sign that name; that she never got any of the money from either of these checks and got nothing more than her pay for her day's work.

On cross-examination witness testified that she was twenty-nine years old, had been in Washington since 1922 coming from Orangeburg, South Carolina; that she didn't have very much schooling; that she learned to write and

read a little; that sometimes she read the newspapers when she got a spare chance; that she wrote the name "Emelia Murray" on an application addressed to C. F. Waring, dated December 14, 1926 for a loan of \$2,000 to be secured by second deed of trust on said lot 23, square 395, which said application was offered and received in evidence and marked "Defendant's Exhibit 1"; that she also signed the name "Emelia Murray" to a paper professing to be a deed of trust from Emelia Murray to R. Thomas Robinson and Robert E. P. Kreiter, Trustees, conveying lot 156 in Square 150 in the District of Columbia to secure a loan of \$1,000, which said deed of trust was acknowledged on the 13th day of November, 1926 before one Martin J. Quigley, a Notary Public; said paper was offered and received in evidence and marked Defendant's Exhibit 2; that she also signed the name "Mollie B. Ball" to a paper professing to be a deed of trust dated the 13th day of October, 1926, from Mollie B. Hall to R. Thomas Robinson and R. E. P. Kreiter, Trustees, of lot 85 in Square 150 in the District of Columbia, to secure a loan of \$1,200, said deed of trust being acknowledged on the 13th day of October, 1926 before Annie W. Ball, Notary Public. Said paper was offered and received in evidence and marked Defendant's Exhibit No. 3. That when she signed these papers she didn't know she was doing anything wrong; that when she signed the name "Emelia Murray" she did not believe her name was Emelia Murray; that Flanagan gave her a little slip of paper with two names and said they had to get someone to sign the papers because the lady was sick; that when she signed the name "Mollie B. Hall" she was not under the impression that her name was "Mollie B. Hall". In response to the question—"Your testimony is to the effect that you thought it was quite right to sign the name of anyone he requested you to. Is that what you mean?" to which witness replied—"I wouldn't sign anyone's name." Counsel for defendant further interrogated—"You would not?" to which witness responded—"I wouldn't sign anyone's name if I had knowed that, but I didn't know it. I thought he wouldn't tell me that it was right, wouldn't put me in trouble, wouldn't tell me nothing to do that was wrong, because after I had been working for him so long, he would

treat me right. I thought he probably would tell me." On redirect examination witness testified that she did not know if the handwriting on Defendant's Exhibit No. 1 was hers.

Whereupon the plaintiff rested.

Thereupon, to maintain the issues on its part joined, the defendant offered as a witness **Frank W. Lee**, who testified that he is one of the Vice-Presidents of the Mount Vernon Savings Bank and in the fall of 1926 held the
17 office of Assistant Cashier in charge of new business; that he was acquainted with Clinton T. Flanagan and is familiar with his handwriting; that the proceeds of the check for \$192.47, dated January 5, 1927, Plaintiff's Exhibit No. 2, were on the 5th day of January, 1927 credited to the account of Clinton T. Flanagan in the Mount Vernon Savings Bank; that Flanagan closed his account in said Bank on September 12, 1927 and drew out all of his deposit; that the endorsement on each of the two checks, respectively dated January 5, 1927 and December 16, 1926, Plaintiff's Exhibits 1 and 2, professing to be that of Clinton T. Flanagan is in Flanagan's handwriting.

Defendant, further to maintain the issues on its part joined, offered as a witness **Homer G. Smith**, who testified that he was Assistant Bookkeeper at the Commercial National Bank; that the proceeds of the check for \$728.13 dated December 16, 1926, passed to the credit of Clinton T. Flanagan in the Commercial National Bank on December 16, 1926 and that the endorsement on the back of that check purporting to be the endorsement of the Commercial National Bank was the endorsement of the Commercial National Bank and that said Flanagan's account with the Commercial National Bank was closed on January 6, 1927.

Defendant, further to maintain the issues on its part joined, recalled as a witness **Annie W. Ball**, who testified that the signature "Annie W. Ball" to the acknowledgment to the paper professing to be a deed of trust from Mollie B. Hall to R. Thomas Robinson and R. E. P. Kreiter, Trustees, dated the 13th day of October, 1926, Defendant's Exhibit No. 3, was her signature. Said acknowledgment reads as follows:

18 **DISTRICT OF COLUMBIA, *To wit:*

I, Annie W. Ball, a Notary Public in and for the District of Columbia do hereby certify that Mollie B. Hall, party to a certain deed bearing date on the 13th day of October, 1926 and hereto annexed, personally appeared before me in said District, the said Mollie B. Hall being personally well known to me as the person who executed the said deed and acknowledged the same to be her act and deed.

“Given under my hand and seal this 13th day of October, 1926.

ANNIE W. BALL,
Notary Public.”

Thereupon both defendant and plaintiff rested.

The foregoing is the substance of all of the evidence in the case.

Thereupon, the plaintiff prayed the court to instruct the jury as follows:

Plaintiff's Instruction No. 1.

“The jury are instructed as a matter of law that their verdict shall be for the Plaintiff.”

which said instruction the court then and there granted, to which ruling of the court granting said instruction counsel for the defendant then and there excepted.

The Defendant prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 2.

“The jury are instructed as matter of law, that if they find from the evidence that plaintiff, believing Theodosia Stevenson to be one Emelia Murray, delivered the checks offered in evidence either to Theodosia Stevenson or Clinton T. Flanagan with the intent that Theodosia Stevenson should receive the proceeds thereof, and if the jury further find that Theodosia Stevenson, or her agent, endorsed said checks in the name of Emelia Murray, or received the proceeds thereof, then their verdict should be for the defendant.”

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 3.

19 "The jury are instructed that if they believe from the evidence that Theodosia Stevenson and Clinton T. Flanagan entered into a conspiracy to defraud, then, any act done by said Flanagan in furtherance of such conspiracy was done as the agent of said Theodosia Stevenson and was in law her act."

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 4.

"The jury are instructed as matter of law that one may be a party to a conspiracy even though he or she is to receive no benefit therefrom."

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 5.

"The jury are instructed as matter of law that one may be a party to a conspiracy even though he or she is ignorant of the ultimate object of the conspiracy if he or she by the exercise of ordinary care should have known that he or she was assisting in the doing of an unlawful act."

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 6.

“The jury are instructed as matter of law that if they believe from the evidence that Theodosia Stevenson and Clinton T. Flanagan entered into a conspiracy to procure from the plaintiff the checks offered in evidence and to receive the proceeds thereof, and the plaintiff, believing said Theodosia Stevenson to be one Emelia Murray, delivered said checks to either Theodosia Stevenson or Clinton T. Flanagan with the intent that Theodosia Stevenson, under the name of Emelia Murray, should receive the proceeds thereof, and either said Theodosia Stevenson or said Flanagan received the proceeds of said checks, their verdict should be for defendant.”

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

20 The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 7.

“The jury are instructed as matter of law that if they believe from the evidence that Theodosia Stevenson and Clinton T. Flanagan entered into a conspiracy to procure from the plaintiff the checks offered in evidence and to receive the proceeds thereof and the plaintiff, believing said Theodosia Stevenson to be one Emelia Murray, delivered said checks to either Theodosia Stevenson or Clinton T. Flanagan with the intent that Theodosia Stevenson, under the name of Emelia Murray, should receive the proceeds thereof, and either said Theodosia Stevenson or said Flanagan endorsed the name Emelia Murray thereon, their verdict should be for defendant.”

But the court refused to grant said instruction to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 8.

“The jury are instructed that if they find from the evidence that it was the intention of the plaintiff that the proceeds of the two checks offered in evidence should be

paid to the one who executed the deed of trust note in the sum of \$2,000 bearing date December 14, 1926, and the deed of trust purporting to secure the same and that Theodosia Stevenson in signing said two last mentioned papers acted as the innocent agent of Clinton T. Flanagan, then the act of the said Theodosia Stevenson in signing said two last mentioned papers was the act of the said Flanagan and if they further find that the proceeds of said checks were received by, or passed to the credit of said Flanagan, then their verdict must be for the defendant."

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 9.

"The jury are instructed that if they find from the evidence that the plaintiff was guilty of negligence in believing that Theodosia Stevenson was Emelia Murray and in issuing the two checks offered in evidence and delivering the same either to Theodosia Stevenson or Clinton T. Flanagan, and that such negligence was the proximate cause of the loss, their verdict should be for the defendant."

21 But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

The Defendant then prayed the court to instruct the jury as follows:

Defendant's Prayer for Instruction No. 10.

"The jury are instructed that if they find from the evidence that the plaintiff intended that the two checks offered in evidence should be paid to someone other than Emelia Murray in the belief that such other person was Emelia Murray, then their verdict must be for the defendant."

But the court refused to grant said instruction, to which ruling of the court the defendant then and there excepted.

Thereupon the court directed the jury to return a verdict for the plaintiff in the sum of \$920.60, to which action of the court counsel for the defendant then and there excepted.

Thereupon the jury rendered their verdict as directed by the court.

Each of the foregoing exceptions was duly taken by the defendant at the time it purports to have been taken in the foregoing statement of the proceedings of the trial of this case and each of said exceptions was duly noted by the court upon its minutes at the time it was taken and before the jury considered of their verdict and the defendant prays the court to sign this, its bill of exceptions, in order that the same may be made matter of record, which is accordingly done this 30 day of July, 1929, nunc pro tunc.

GEORGE C. AUKAM,
Judge.

Approved:

GEORGE W. OFFUTT,
ROSS H. SNYDER.

Attorneys for Plaintiff.

DONALDSON & JOHNSON,
VERNON E. WEST,

Attorneys for Defendant.

22 Filed Jul. 3, 1929, Municipal Court, District of
Columbia.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable George C. Aukam, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between Realty Appraisal and Title Company, a Corporation, Plaintiff, and National Metropolitan Bank, a Corporation, Defendant, No. A-5395, a manifest error hath happened, to the great damage of the said Defendant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Wash-

ington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 2nd day of July, in the year of our Lord one thousand nine hundred and twenty-nine.

[Seal Court of Appeals of the District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Allowed by

GEORGE E. MARTIN,
*Chief Justice of the Court of
Appeals of the District of Columbia.*

[Endorsed:] A-5395. Filed Jul. 3, 1929, Municipal Court, District of Columbia.

23

Designation of Record.

(Filed July 30, 1929.)

The Clerk will please prepare at the cost of defendant, Metropolitan National Bank, the transcript of the record on appeal to the Court of Appeals of the District of Columbia and include therein the following:

1. Declaration.
2. Demand for Jury Trial.
3. Pleas.
4. Joinder of Issue.
5. Minute entry of verdict.
6. Motion for new Trial.
7. Order overruling motion for new trial.
8. Judgment.
9. Writ of error.
10. Order fixing amount of supersedeas bond.
11. Memorandum of filing of supersedeas bond.

- 12. Bill of exceptions.
- 13. Assignments of error.
- 14. This designation.

(Sgd.) DONALDSON & JOHNSON,
(Sgd.) VERNON E. WEST,
Attorneys for Defendant.

We consent.
(Sgd.) GEORGE W. OFFUTT,
(Sgd.) ROSS H. SNYDER,
Attorneys for Plaintiff.

24 Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in Cause, At Law, No. A-5395, wherein Realty Appraisal and Title Company, a corporation, is plaintiff, and National Metropolitan Bank, a corporation, is defendant, as the same *that* remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of August, 1929.

[Seal Municipal Court of the District of Columbia.]

BLANCHE NEFF,
Clerk,
By JNO. T. HICKS,
Assistant Clerk.

Endorsed on cover: In error to the Municipal Court of the District of Columbia. No. 5031. National Metropolitan Bank, a corporation, plaintiff in error, vs. Realty Appraisal and Title Company, a corporation. Court of Appeals, District of Columbia. Filed Aug. 19, 1929. Henry W. Hodges, Clerk.

